

Support



The Comptroller General
of the United States

(Corrected Copy)

Washington, D.C. 20548

Decision

Matter of: Van Ben Industries, Inc.

File: B-234875.2

Date: August 23, 1989

DIGEST

Request for reconsideration of decision holding that contracting agency properly accepted bid that incorrectly certified that materials to be furnished under contract are not hazardous is denied where protester reiterates prior arguments, but does not establish error of fact or law.

DECISION

Van Ben Industries, Inc. (VBI), requests reconsideration of our decision in Van Ben Indus., Inc., B-234875, July 17, 1989, 89-2 CPD ¶ _____. In that decision, we denied VBI's protest of an award of a contract to Wisconsin Pharmacal Company for 511,600 iodine water purification tablets, under Defense Logistics Agency (DLA) invitation for bids (IFB) No. DLA120-89-B-0383. We deny the request.

VBI asserted in its protest that Wisconsin's bid should have been rejected as nonresponsive because, by incorrectly certifying under paragraph (c) of clause 52.223-001 (Hazardous Material Identification and Material Safety Data) that the water purification tablets are not hazardous items, Wisconsin did not evidence an intent to provide the Material Safety Data Sheets required by the IFB for hazardous materials. We denied the protest on the ground that the incorrect certification under paragraph (c) had no bearing on whether the bid constituted an unequivocal offer to provide the data sheets as part of its performance of the contract. We held that Wisconsin's bid was responsive to the requirement elsewhere in the clause that data sheets be furnished whenever, as here, materials are listed in applicable regulations as hazardous, by virtue of the bidder's signing the bid without taking express exception to the requirement. We indicated our view that the certification in paragraph (c) was informational in nature and was unrelated to whether Wisconsin had obligated itself to perform as required.

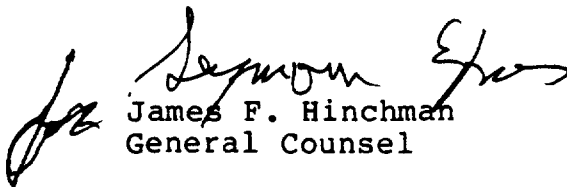
046324/139413

In its request for reconsideration, VBI takes issue with our conclusion that Wisconsin adequately expressed its intent to provide data sheets at no additional cost to the government, since Wisconsin certified that the material was not hazardous; VBI reads this certification as declaring Wisconsin's intention not to furnish data sheets. VBI asserts that our conclusion is contrary to contract interpretation principles.

This argument is a reiteration of the allegation on which VBI's initial protest was based. As indicated above, we fully addressed, and rejected, this allegation in detail in our prior decision. While VBI's request reflects its disagreement with the decision, it has not shown any errors of law made in the decision, or presented information not previously considered that would warrant reversing our conclusion. See MMC/PHT Co.--Reconsideration, B-230599.3, Sept. 9, 1988, 88-2 CPD ¶ 222. Mere continuing disagreement with our prior decision provides no basis for reversing the decision. See TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 CPD ¶ 389. We find nothing in our decision inconsistent with contract interpretation principles.

VBI also takes issue with our holding that its bid and Wisconsin's were identical; VBI argues that this is not the case since Wisconsin would incur a cost in preparing data sheets which it did not provide for in its bid since it believed the materials were not hazardous, and that the data sheets thus would not be required. Again, this is no more than a reiteration of a prior protest argument. As we held in our decision, since Wisconsin's bid price on its face was the same as VBI's and Wisconsin was obligated to perform all the work in the IFB at its bid price, the agency properly concluded that the bids were identical and invoked the tie bid procedures in selecting the awardee. VBI's disagreement with this conclusion is not a valid basis for reconsideration.

Since VBI has failed to demonstrate that our prior decision was based on errors of fact or law, 4 C.F.R. § 21.12(a) (1988), the request for reconsideration is denied.


James F. Hinchman
General Counsel